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June 17, 2022



U.S. Environmental Protection Agency
Stephen Capuyan (SEDAE)
Enforcement Officer
1201 Elm Street
Dallas, Texas 75270

VIA EMAIL (capuyan.stephen@epa.gov)
AND CM/RRR

RECEIVED
JUN 27 AM 10:37
U.S. ENVIRONMENTAL PROTECTION AGENCY
DALLAS, TEXAS 75270

Re: Response to April 18, 2022 Special Notice Letter for the Brine Service Company
Superfund Site in Corpus Christi, Texas ("Site")

Dear Mr. Capuyan:

This letter is sent on behalf of ETC Sunoco Holdings LLC f/k/a Sunoco, Inc. and Energy Transfer (R&M), LLC f/k/a Sunoco, Inc. (R&M) (collectively "Sunoco") and constitutes Sunoco's response to EPA's April 18, 2022 Special Notice Letter ("SNL"). Sunoco has been identified as a PRP at the Site based on certain documents referred to as the "Evidence of Liability against Sunoco" (attached to the September 30, 2021 first SNL), which consists of (i) a 2004 affidavit of John R. Kampfenkel, a former Suntime/Sunoco Corpus Christi refinery employee ("2004 Affidavit"), (ii) an August 30, 2002 Sunoco supplemental response to EPA's CERCLA 104(e) information request ("104(e) Response"), and (iii) a 1981 Notification of Hazardous Waste for Suntime Refining Company, EPA Form 8900-1 ("1981 Notification").

As more fully set forth below, Sunoco believes its connection to the Site is tenuous at best and therefore Sunoco declines at this time to make a Good Faith Offer in response to EPA's April 18, 2022 SNL. That said, Sunoco has been a member in good standing of the PRP working group that performed the Remedial Investigation and Feasibility Study ("RI/FS") for the Site pursuant to the October 2009 Administrative Order on Consent ("RI/FS AOC") that Sunoco and those other working group members signed.¹

Consequently, the amount of response costs that Sunoco has already paid pursuant to the RI/FS AOC likely exceed any so-called "equitable allocation" of Site costs that might be attributable to Sunoco, particularly when you consider what appears to be a significant "orphan share" at the Site. That orphan share likely includes other PRPs who were known to use Brine Service Company but did not receive an SNL, bankrupt or otherwise insolvent current and past

¹ The parties to the RI/FS AOC include Sunoco, Anadarko E&P Company LP, ConocoPhillips Company, El Paso Merchant Energy-Petrol Company, Hess Corporation, and Texaco, Inc.

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Site owners, and bankrupt or insolvent entities/individuals who would have "arranger liability" due to their Site involvement.

Sunoco has not made its decision regarding a Good Faith Offer lightly, but rather has reached that decision based on its review of the 2004 Affidavit, the 104(e) Response, and the 1981 Notification, which Sunoco understands is the exclusive information EPA used in determining that Sunoco should receive the April 18, 2022 SNL. As stated, Sunoco has also considered its role and participation in completing the RI/FS as a working group member and believes its involvement to date exceeds any CERCLA "equitable allocation" the company might be shown to have at the Site. All said, Sunoco makes the following observations with respect to the foregoing information.

1. The 2004 Affidavit. The Affidavit, only a single page, contains Mr. Kampfenkel's recollections twenty-three (23) years after Koch purchased the former Suntime refinery and twenty-seven (27) years after he states Suntime last used Brine Service Company. Since the Affidavit was completed so many years after the alleged events took place, that fact alone bears upon its accuracy. In addition, while Mr. Kampfenkel states that Suntime used Brine Service Company to haul refinery wastes "on-site" and "off-site", he also states that he did not recall if Brine Service Company disposed of Suntime wastes at the Site. Consequently, the Affidavit falls short of connecting Suntime (and Sunoco) to the Site. Finally, the Affidavit is likely inadmissible hearsay that cannot be used as evidence against Sunoco to establish CERCLA liability.

2. 104(e) Response (August 30, 2002). This Sunoco response supplemented the company's August 7, 2002 response. Sunoco stated it found no documents relating to waste disposal for the Corpus Christi refinery for the relevant time period (1946 through the 1960s). Sunoco also stated that it had spoken with both Mr. Jessie Laird, the former refinery manager who signed the 1981 Notification, and Mr. Kampfenkel, the individual who signed the Affidavit. Both individuals recalled Suntime using Brine Service Company but neither could recall when that relationship began and there was no indication about whether Brine may have used the Site for any Suntime/Sunoco waste. In sum, the 104(e) Response simply confirmed Suntime/Sunoco's use of the Brine Service Company as a contractor but does not establish that Suntime or Sunoco waste was disposed at the Site.

3. 1981 Notification. The 1981 Notification was completed by John Kampfenkel (per the 2004 Affidavit) and signed by Mr. Laird, the then-current refinery manager. The 1981 Notification was completed twenty-seven (27) years before the 2004 Affidavit, there are inconsistencies between the two, and most of the information in the 1981 Notification is not based on the personal knowledge of either Mr. Laird or Mr. Kampfenkel. For example, the 1981 Notification states, in pertinent part, that hazardous waste from the Suntime Refining Company's Corpus Christi Facility were sent to the Site from 1957-1962. Mr. Kampfenkel had no personal knowledge of that timeframe since he started at Suntime in 1965, and the end date is also inconsistent with the 2004 Affidavit in which Mr. Kampfenkel stated that Sunoco ceased using Brine Service Company in 1977. Mr. Kampfenkel also had no personal knowledge of the estimated 350,000 gallon "Total Facility Waste Amount" in Section F, and essentially confirms that lack of knowledge in the 2004 Affidavit when he says "...I attempted to be as accurate as possible, although the events I was reporting had occurred many years before." The

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inconsistencies and lack of personal knowledge call both the 1981 Notification and 2004 Affidavit into question.

In sum, Sunoco believes that its liability at the Site has not been established, and to the extent any such liability exists, Sunoco further believes the response costs it paid through its involvement in performing the RI/FS exceeds its "equitable share."

If EPA has additional information for Sunoco to consider, please let me know and the company can then reevaluate its position. I can be reached at 713.752.8628 if you would prefer to discuss further.

Sincerely,

CRAIN, CATON & JAMES, P.C.

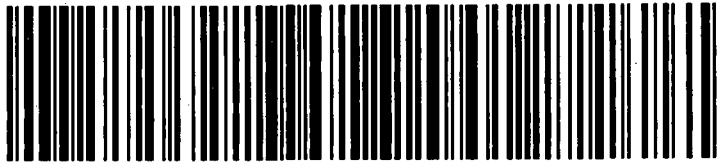
By: Kelly D. Brown
Kelly D. Brown

KDB/kkd

cc: Leonard Schilling (via email)

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